Kaiser, Russell

From: Kaiser, Russell
Sent: Thursday, November 06, 2014 1:03 PM
To: Pendergast, Jim
Subject: Galveston Wetlands

- On October 29, 2014, Region 6 elevated the Galveston District's jurisdictional determination (JD) for SWG-2013-00982 to EPA Headquarters.
  - The JD involves 51 Texas coastal prairie wetlands totaling 49.2 acres in Houston, Texas.
  - The Corps' draft determination is that the wetlands are isolated and non-jurisdictional.
  - The Region's opinion is that the wetlands are adjacent to the nearby relatively permanent tributary and traditional navigable water via connections through ditches, swales, and "fill and spill" hydrology. HQ has reviewed the request and has requested additional information from the Region on the rationale for making the adjacency determination.
  - If EPA and Corps Headquarters agree, they have until November 12, 2014 to issue a joint memo per the June 2007 coordination memo.
  - If EPA and the Corps do not agree, EPA has until November 24, 2014 to issue a unilateral memo as per the June 2007 coordination memo.

Russell L. Kaiser
Chief, Wetlands & Aquatic Resources Regulatory Branch
1301 Constitution Ave., N.W.
Room 7217M West Bldg.
Washington, DC 20004
P: 202.566.0963

5 Nov 14

Phone Conv with Sharon Patrick & Russ Kaiser to discuss submitted doc & need to provide MORE support to Relot Corps documentation.

NOTE that if NO additional information is submitted there will be NO action on the request via HQ

Kaiser, Russell

From: Kaiser, Russell
Sent: Thursday, October 30, 2014 12.53 PM
To: Kwok, Rose
Cc: Goodin, John; Downing, Donna
Subject: FW: Elevation of Jurisdictional Determination SWG-2013-00982
Attachments: Attachment 1.pdf; coe email.pdf, JDform.pdf; elevationemail.pdf; signedmemo.pdf

Rose – is the wetlands that include the 41 iso wetlands that are located beyond the 100 year floodplain in Galveston District. I believe this is a case where the wetlands have been previously filled. Pls advise – thanks...

John – we will follow up on this with you but this is one I highlighted about a week ago in conversation with you...

Russell L. Kaiser
Chief, Wetlands & Aquatic Resources Regulatory Branch
1301 Constitution Ave., N.W.
Room 7217M West Bldg.
Washington, DC 20004
P: 202.566.0963

From: Teague, Kenneth
Sent: Thursday, October 30, 2014 12:06 PM
To: Goodin, John
Cc: Richard.P.Pannell@usace.army.mil; Kwok, Rose; Jaynes, Kenneth E (Kenny) SWG; Parrish, Sharon; Kitto, Alison
Subject: Elevation of Jurisdictional Determination SWG-2013-00982

Please find attached, a memo (filename=signed memo) elevating this JD to EPA Headquarters. I have also included the attachments to the memo. The following files are considered "Attachment 2": coe email.pdf, JDform.pdf, elevatinemail.pdf. I have also sent additional supporting information to Rose Kwop via separate email. Please call me if you have any questions.

Kenneth Teague, PWS, Certified Senior Ecologist
Environmental Scientist
Wetlands Section
EPA Region 6
1445 Ross Ave, Suite 1200 (6WQ-EM)
Dallas, TX 75202
phone: 214-665-6687
FAX: 214-665-6689

-----Original Message-----
From: Teague, Kenneth [mailto:teague.kenneth@epa.gov]
Sent: Thursday, October 30, 2014 11:06 AM
To: Goodin, John
Cc: Pannell, Richard P COL SWG; Kwok, Rose; Jaynes, Kenneth E (Kenny) SWG; Parrish, Sharon; Kitto, Alison
Subject: [EXTERNAL] Elevation of Jurisdictional Determination SWG-2013-00982

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Environmental Scientist

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202 – 2733

Office of the Regional Administrator

October 29, 2014

MEMORANDUM

SUBJECT: Jurisdictional Determinations

FROM: Ron Curry
Regional Administrator

TO: John Goodin
Director, Wetlands Division

We are unable to come to an agreement with the Corps of Engineers, Galveston District regarding the jurisdictional status of 51 wetlands in the League City are of Harris County, Texas, under the permit application number SWG-2013-00982. Therefore, we are elevating this jurisdictional determination to the U.S. Environmental Protection Agency Headquarters. Attachments are included providing information to document why we believe the wetland sites should be considered jurisdictional. We will continue to work with Galveston District to gather additional information and will provide it to you as we receive it.

If you have any questions, please contact me at (214) 665-2100, or Mr. Ken Teague, Environmental Scientist, at (214) 665-6687.

Attachments

cc: Colonel Richard P. Pannell
U.S. Army Corps of Engineers, Galveston District

Attachment 1
Supporting Information

- We believe these wetlands may be considered adjacent to either Armand Bayou or Horsepen Bayou.
- Armand Bayou is a Traditional Navigable Water
- Horsepen Bayou is a Relatively Permanent Water, and drains into Armand Bayou.
- We agree with the COE that these wetlands:
    - are driven hydrologically by precipitation
    - may experience hydrologic connection via overland sheet flow
    - are not in the 100 year floodplain, as estimated by FEMA
    - are not connected to an RPW and TNW by any confined surface hydrologic connections nor any shallow subsurface hydrologic connections
    - are not tidal
    - are not located in an ecological landscape position that would be utilized by any known species in the geo-region that would require both the wetland and water body to fulfill their life cycle requirements
    - do not have a known nexus to interstate commerce
- We disagree with the COE however that:
    - these wetlands are all greater than 1 mile away from the nearest water body
    - these wetlands would only experience hydrologic connection for extremely brief episodic events that would occur in extreme above normal circumstances
    - these wetlands "fixate" N and P
    - "…it would be purely speculative to state that the destruction of these wetlands would have more than speculative effect upon the chemical, physical and/or biological integrity of the nearest TNW…"
    - these wetlands are "isolated"
    - these wetlands are not adjacent to a surface tributary system to navigable waters
    - these wetlands would not be subject to federal jurisdiction under Section 404 of the Clean Water Act
- EPA position
    - During periods of higher rainfall, these wetlands are likely filled, and sometimes overflow onto the surrounding landscape via swales, thence into ditches, which discharge into Armand Bayou or Horsepen Bayou.
    - These periods of higher rainfall are part of "normal" climatic conditions in this area. We would not consider many of these events to be "above normal circumstances".
    - We would consider these wetlands to be "adjacent" to both Armand Bayou and Horsepen Bayou, since in our view they are "neighboring".
    - Thus, these wetlands are probably not isolated, in our opinion.
    - As described by Wilcox et al. (2011) and Forbes et al. (2012), these wetlands remove nutrients prior to water discharge to the surrounding landscape. Since they occupy a significant percentage of this landscape, it is highly likely that they have a significant impact on water quality of downstream waters, including Armand Bayou, Clear Lake, and Galveston Bay.

- Thus, it would not be speculative to state that the destruction of these wetlands would have more than speculative effect upon the chemical, physical and/or biological integrity of the nearest TNW.
- These wetlands would be subject to federal jurisdiction under Section 404 of the Clean Water Act.

Goodin, John

From: Goodin, John
Sent: Thursday, October 30, 2014 12:53 PM
To: Pendergast, Jim
Subject: FW: Elevation of Jurisdictional Determination SWG-2013-00982
Attachments: Attachment 1.pdf; coe email.pdf; JDform.pdf; elevationemail.pdf; signedmemo.pdf

---

From: Goodin, John
Sent: Thursday, October 30, 2014 12:48 PM
To: Kaiser, Russell
Cc: Donna Downing
Subject: FW: Elevation of Jurisdictional Determination SWG-2013-00982

First time I've been sent one of these. Next steps?

From: Teague, Kenneth
Sent: Thursday, October 30, 2014 12:06 PM
To: Goodin, John
Cc: Richard.P.Pannell@usace.army.mil; Kwok, Rose; Jaynes, Kenneth E (Kenny) SWG; Parrish, Sharon; Kitto, Alison
Subject: Elevation of Jurisdictional Determination SWG-2013-00982

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Kenneth Teague, PWS, Certified Senior Ecologist
Environmental Scientist
Wetlands Section
EPA Region 6
1445 Ross Ave, Suite 1200 (6WQ-EM)
Dallas, TX 75202
phone: 214-665-6687
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Goodin, John

From: Goodin, John
Sent: Thursday, October 30, 2014 12:49 PM
To: Kaiser, Russell
Cc: Donna Downing
Subject: FW: Elevation of Jurisdictional Determination SWG-2013-00982
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Dallas, TX 75202
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FAX: 214-665-6689

Kaiser, Russell

From: Kaiser, Russell
Sent: Friday, October 31, 2014 10:07 AM
To: Goodin, John
Subject: RE: Elevation of Jurisdictional Determination SWG-2013-00982

Thanks... We need to chat re: this one next week...

Sent from my Windows Phone

From: Goodin, John
Sent: 10/31/2014 9:53 AM
To: Kaiser, Russell
Subject: FW: Elevation of Jurisdictional Determination SWG-2013-00982

Sent from my Windows Phone

From: Jaynes, Kenneth E (Kenny) SWG
Sent: 10/31/2014 9:14 AM
To: Teague, Kenneth; Goodin, John; Parrish, Sharon; Curry, Ron; Coleman, Sam
Cc: Pannell, Richard P COL SWG; Kwok, Rose; Kitto, Alison; Jensen, Stacey M HQ02; McLaughlin, Kimberly SWG; Dixon, Vicki G SWD; Shivers, Kristin D SWG; Davidson, John SWG
Subject: RE: Elevation of Jurisdictional Determination SWG-2013-00982

Mr. Teague, et al;

Thanks for the copies of the elevation information associated with this jurisdictional determination from EPA Region VI (below) and the Corps will be moving forward with the status being as of the date of this notification: this jurisdictional determination has been elevated to the EPA HQ and Corps HQ level to address and finalize.

It is important to note, as previous communicated, that this jurisdictional determination coordination action is NOT associated with a Department of the Army permit application (as indicated in the 29 Oct 2014 EPA memo) but is associated with investigation of a purported non-permitted discharge of dredged and/or fill material into waters of the United States under Section 404 of the Clean Water Act.

These construction activities continue and are still on-going as of the date of this e-mail; and the vast majority (if not all of the wetlands) have been fill and/or excavated. As indicated in the jurisdictional coordination SWG's position associated with this investigation is there are not any "waters of the United States" on the tract that have been filled and as such a violation of Section 404 of the Clean Water Act has not occurred; therefore a notice of non-permit violation was not sent. However, in full accordance with rules and regulations, EPA has the ability and can assume the role of the lead federal agency associated with this non-permit investigation/enforcement action immediately.

If you have any questions please contact me.

V/R

Kenny Jaynes
Chief, Compliance Branch
Galveston, District
409-766-3985

Teague, Kenneth

From: Parrish, Sharon
Sent: Monday, October 20, 2014 4:08 PM
To: Kenny Jaynes
Cc: Teague, Kenneth
Subject: FW: JD Elevation

Dear Kenny - Thank you for providing your e-mail of October 7, 2014 initiating the coordination process with the EPA as required by the Rapanos Guidance for finalizing jurisdictional determination for purposes of Section 404 of the Clean Water Act and "isolated" non-jurisdictional wetland determinations for "51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)". We elect to elevate the review to our Regional Administrator (RA) and so are notifying you in writing.

The rationale for EPA's position on this is based on: 1) We believe that these wetlands are adjacent to a Relatively Permanent Water (RPW); 2) We believe that these wetlands would likely be connected hydrologically to an RPW and TNW during higher rainfall events, via overland flow and flow through swales and/or ditches, and that such events are within the definition of "normal" environmental conditions for this region. 3) While we agree that there are factors other than the water quality functions of wetlands that may play a role in determining whether or not a significant nexus exists between a wetland and an RPW and TNW, water quality alone can constitute such a significant nexus. Finally, we would like to reiterate that there are several high quality peer-reviewed, published studies of very similar coastal Texas depressional wetlands' hydrology and water quality (Wilcox et al. 2011; Forbes et al. 2012), which document connectivity to downstream waters, as well as a significant nexus between them and downstream waters via their water quality functions. In this particular case, we believe these studies clearly apply, as the sites that were studied are very nearby and are very similar to those you have determined not to be jurisdictional.

All this said, in order to be consistent with recent similar EPA reviews of COE JD's, we must acknowledge that these reviews include some uncertainty. We have not visited the site and we have limited information to review. If you have any questions, please contact Mr. Kenneth Teague of my staff at (214) 665-6687.

Sincerely,

Sharon Fancy Parrish
Chief
Wetlands Section
EPA Region 6

References

Forbes, M. G., J. Back, and R. D. Doyle. 2012. "Nutrient Transformation and Retention by Coastal Prairie Wetlands, Upper Gulf Coast, Texas." *Wetlands*, 32(4), 705–715.

Wilcox, B. P., D. D. Dean, J. S. Jacob, and A. Sipocz. 2011. "Evidence of Surface Connectivity for Texas Gulf Coast Depressional Wetlands." *Wetlands*, 31(3), 451–458.

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APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 7 October 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Galveston District, SWG-2013-00982, Trendmaker Homes, Isolated Wetlands

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Texas County/Parish: Harris City: Houston
Center coordinates of site (lat/long in degree decimal format, NAD-83): Lat. See table° N, Long. see table ° W:
Universal Transverse Mercator: UTM: 15, N., E.,NAD: 83
Name of nearest water body: See Attached Sheet
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A
Name of watershed or Hydrologic Unit Code (HUC): West Galveston Bay -- 12040204
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: 6 October 2014
☒ Field Determination. Date(s): 12 June 2014, 27 August 2014, 11 September 2014, and 30 September 2014

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. **[*Required*]**
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are no** *"waters of the U.S."* within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[*Required*]**

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☒ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet: width (ft) and/or acres
      Wetlands: acres

   c. **Limits (boundaries) of jurisdiction** based on: **Pick List**
      Elevation of established OHWM (if known):

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Please see the attached list for specific wetland identifications and locations. The wetlands within the project boundary listed on the attached sheet are isolated, and do not posses a nexus to commerce. Therefore, it is SWG draft determination that these are not waters of the United States subject to Section 404 of the Clean Water Act. Waters of the United States are defined in 33 CFR 328.3(a).

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months)
[3] Supporting documentation is presented in Section III.F.

The vast majority of the subject wetlands have been landcleared, some were excavated, and detention basin(s) were created. The wetlands were identified using the Atlantic Gulf Coast Region Supplement to the 1987 Corps of Engineers Wetland Delineation Manual.

*NOTE: The Corps and the EPA (Mr. Jim Herrington) visited a portion of the site on 4 December 2013 to investigate a purported unauthorized discharge of fill into wetlands associated with a utility right-of-way. Based on the results of our investigation, no wetlands were filled, and the case was closed accordingly.

Because most of the area has been impacted and the subject wetlands are isolated, the exact boudaries (as standard with isolated wetlands) were not verified. Site visits were conducted by the Corps on 12 June 2014, 27 August 2014, 11 September 2014, and 30 September 2014. The majority of the subject wetlands were examined to ensure that they are enclosed wetlands surrounded by uplands. These subject wetlands are seasonal, depressional wetlands, and precipitation is the source of hydrology. The subject wetlands were/are located in mix of tallow forest and prairie ecosystems. A combination of off-site information, in conjunction with on-site data, were used to determine the extent of the wetlands and locations (including LIDAR). All of the wetlands, as identified per the manual, are surrounded by upland (non-aquatic features).

The attached table provides the nomenclature of the wetland polygon, size, center location of each wetland, distance to the nearest water of the United States, and the distance to the nearest TNW. All center locations and distances are approximate.

To address the possibility of these wetlands being waters of the United States subject to Section 404 of the Clean Water Act, each purpose, as identified in federal regulation 33 CFR 328(a) and the 2 December 2008 Rapanos guidance, will be addressed.

33 CFR 328(a):
(1) These wetlands are not affected by any tidal waters, nor are they currently used, used in the past, or susceptible for use in interstate or foreign commerce.
(2) The subject wetlands are not interstate wetlands and do not cross interstate or tribal boundaries.
(3) The destruction of these isolated, intrastate wetlands would not affect interstate or foreign travelers for recreational or other purposes; would not affect fish or shellfish that could be taken and sold in interstate or foreign commerce; and would not affect the current use, or potential use, for industrial purposes by industries in interstate commerce. 33 CFR 330.2(e) defines "isolated" as those non-tidal waters of the United States that are not part of a surface tributary system of interstate or navigable waters of the United States, and are not adjacent to such tributary waterbodies.
(4) The subject wetlands are not impoundments of waters of the United States.
(5) The subject wetlands are not part of any surface tributary system of waters identified in 1-4.
(6) The subject wetlands are not part of the territorial seas.
(7) The subject wetlands are not adjacent to waters (other than waters that are themselves wetlands) identified in 1-6. Adjacent is defined in 33 CFR 328.3(c) as bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are adjacent wetlands.
(8) The subject wetlands are not prior converted croplands.

To address potential adjacency, both geomorphically and ecologically, SWG has verified that these wetlands are not seperated from waters of the United States by river berms, dunes, man-made dikes and the like, nor are they any of the following:
BORDERING: The subject wetlands, under normal conditions in the hydrologic cycle, are not located along the margin or edge of a water of the United States. These special aquatic sites do not share at least one boundary with a water of the United States (i.e. the high tide line or the ordinary high water mark).
CONTIGUOUS: The subject wetlands, under normal conditions in the hydrologic cycle, do not touch or directly connect to another water of the United States.
NEIGHBORING: The subject wetlands, under normal conditions in the hydrologic cycle, are not located within reasonable close proximity to another water of the United States, either on the horizon or vertical geometric plane. They are not located in either a contiguous or bordering landscape position. They do not have a shared surface hydrologic connection with any water of the United States during expected high flow. These wetlands are physically separated from any water of the United States by more than one hydrology barrier (e.g. man-made dikes, beach dunes, natural river berms, and/or similar obstruction). These wetlands would not allow the exchange of waters via a surface hydrology connection with any water of the United States during expected high flows.

2 December 2008 Rapanos Guidance:
Federal regulation and the Rapanos guidance have the same definition of adjacent. However, the Rapanos guidance provides some clarification and stated that if any one of the following three criteria is present, an adjacent determination could be made.

1) Unbroken Surface or Shallow Sub-Surface Connection: Based on off-site information and site visits, the Corps could not find any unbroken surface or shallow sub-surface connections between the subject wetlands and any jurisdictional waters. Based on the geomorphology, soils, and location of the subject wetlands, the only way that any potential shared hydrology between any of the subject wetlands and the nearest water of the United States would be during a brief and extreme (above normal) storm event. That connection would be at best speculative.

2) Physical Separation: The subject wetlands are not physically separated by man-made dikes or barrier, natural river berms, beach dunes and the like. They are located well inland from the nearest water of the United States.
3) Reasonably Close Proximity: The subject wetlands are not located in a reasonably close proximity that based upon supporting science, one could infer an ecological connection with any jurisdictional waters. This conclusion is based upon the refinement in the Rapanos guidance, which defines the "reasonably close" concept as a wetland that is located reasonably close to a jurisdictional water, in which an aquatic species (e.g. amphibians, or anadramous and catadramous fishes) requires both the jurisdictional water (excluding other wetlands) and the subject wetland for spawning and/or to fulfill their life cycles requirements. Each wetland was evaluated individually and was not evaluated with other wetlands in the area.

In conclusion, the subject wetlands, as determined by SWG, are not located adjacent (bordering, neighboring, or contigious) to any waters of the United States, as defined in 33 CFR 328.3(c). The subject wetlands are isolated, as defined in 33 CFR 330.2(e). The subject wetlands are located above the anticipated high flow of the closest water of the United States (above the100-year floodplain of any water of the United States). They do not have any confined hydrological surface connection, nor any know shallow subsurface connections to any water of the United States. They have also been determined not to be ecologically adjacent, as defined in the Rapanos guidance as being reasonably close such that an ecologic inteconnectivity is beyond speculation or insubstantial. There are not any known species in this georegion that require both the subject wetland and the nearest waterbody (a water of the United States other than an adjacent wetland) to fullfill spawning and/or life cycle requirements. Therefore, it is SWG draft determination that the subject wetlands are isolated, with no known nexus to interstate commerce. As such, they are not subject to federal jurisdiction under Section 404 of the Clean Water Act.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW:

   Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, fill out Section III.D.2 and Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the water body[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the water body has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: **Pick List**
   Drainage area: **Pick List**
   Average annual rainfall: inches
   Average annual snowfall: inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☐ Tributary flows through **Pick List** tributaries before entering TNW.

   Project waters are **Pick List** river miles from TNW.
   Project waters are **Pick List** river miles from RPW.
   Project waters are **Pick List** aerial (straight) miles from TNW.
   Project waters are **Pick List** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain:

   Identify flow route to TNW[5]:
   Tributary stream order, if known:

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):

☐ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:
Surface flow is: **Pick List**. Characteristics:
Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

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[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the water body's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain:
  - ☐ Ecological connection. Explain:
  - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List.**

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: linear feet width (ft)
- ☐ Other non-wetland waters: acres
  Identify type(s) of waters:

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   ☒ Water body that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☒ Other non-wetland waters: acres
     Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

   - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

   Provide acreage estimates for jurisdictional wetlands in the review area: acres

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☒ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain:
- ☐ Other factors. Explain:

Identify water body and summarize rationale supporting determination:

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[8]See Footnote # 3.
[9]To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: linear feet width (ft)
- ☐ Other non-wetland waters: acres
  - Identify type(s) of waters:
- ☐ Wetlands: acres

F. **NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**
- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☒ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☐ Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☒ Wetlands: **See attached list** acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. **SUPPORTING DATA. Data reviewed for JD (check all that apply** - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☒ U.S. Geological Survey Hydrologic Atlas: **West Galveston Bay -- 12040204**
  - ☐ USGS NHD data
  - ☒ USGS 8 and 12 digit HUC maps
- ☐ Galveston District's Approved List of Navigable Waters
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24,000 Friendswood and League City, Texas quadrangle**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Web Soil Survey, accessed 5 December 2013**
- ☒ National wetlands inventory map(s). Cite name: **USFWS NWI, accessed 3 December 2013**
- ☐ State/Local wetland inventory map(s):
- ☒ FEMA/FIRM maps: **48201C1060L and 48201C1080L**
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **1995, 2009 Infrared: Google Earth aerials dated 1943-2014**
  or ☒ Other (Name & Date): **Site Visit Photographs, dated 12 June 2014, 27 August 2014, 11 September 2014, and 30 September 2014**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. **ADDITIONAL COMMENTS TO SUPPORT JD:** Please see the attached list for specific wetland identifications and locations. The wetlands within the project boundary listed on the attached sheet are isolated, and do not posses a nexus to commerce. Therefore, it is SWG draft determination that these are not waters of the United States subject to Section 404 of the Clean Water Act. Waters of the United States are defined in 33 CFR 328.3(a).

The vast majority of the subject wetlands have been landcleared, some were excavated, and detention basin(s) were created. The wetlands were identified using the Atlantic Gulf Coast Region Supplement to the 1987 Corps of Engineers Wetland Delineation Manual.

*NOTE: The Corps and the EPA (Mr. Jim Herrington) visited a portion of the site on 4 December 2013 to investigate a purported unauthorized discharge of fill into wetlands associated with a utility right-of-way. Based on the results of our investigation, no wetlands were filled, and the case was closed accordingly.

Because most of the area has been impacted and the subject wetlands are isolated, the exact boudaries (as standard with isolated wetlands) were not verified. Site visits were conducted by the Corps on 12 June 2014, 27 August 2014, 11 September 2014, and 30 September 2014. The majority of the subject wetlands were examined to ensure that they are enclosed wetlands surrounded by uplands. These subject wetlands are seasonal, depressional wetlands, and precipitation is the source of hydrology. The subject wetlands were/are located in mix of tallow forest and prairie ecosystems. A combination of off-site information, in conjunction with on-site data, were used to determine the extent of the wetlands and locations (including LIDAR). All of the wetlands, as identifed per the manual, are surrounded by upland (non-aquatic features).

The attached table provides the nomenclature of the wetland polygon, size, center location of each wetland, distance to the nearest water of the United States, and the distance to the nearest TNW. All center locations and distances are approximate.

To address the possibility of these wetlands being waters of the United States subject to Section 404 of the Clean Water Act, each purpose, as identified in federal regulation 33 CFR 328(a) and the 2 December 2008 Rapanos guidance, will be addressed.

33 CFR 328(a):
(1) These wetlands are not affected by any tidal waters, nor are they currently used, used in the past, or susceptible for use in interstate or foreign commerce.
(2) The subject wetlands are not interstate wetlands and do not cross interstate or tribal boundaries.
(3) The destruction of these isolated, intrastate wetlands would not affect interstate or foreign travelers for recreational or other purposes; would not affect fish or shellfish that could be taken and sold in interstate or foreign commerce; and would not affect the current use, or potential use, for industrial purposes by industries in interstate commerce. 33 CFR 330.2(e) defines "isolated" as those non-tidal waters of the United States that are not part of a surface tributary system of interstate or navigable waters of the United States, and are not adjacent to such tributary waterbodies.
(4) The subject wetlands are not impoundments of waters of the United States.
(5) The subject wetlands are not part of any surface tributary system of waters identified in 1-4.
(6) The subject wetlands are not part of the territorial seas.
(7) The subject wetlands are not adjacent to waters (other than waters that are themselves wetlands) identified in 1-6. Adjacent is defined in 33 CFR 328.3(e) as bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are adjacent wetlands.
(8) The subject wetlands are not prior converted croplands.

To address potential adjacency, both geomorphically and ecologically, SWG has verified that these wetlands are not seperated from waters of the United States by river berms, dunes, man-made dikes and the like, nor are they any of the following:
BORDERING: The subject wetlands, under normal conditions in the hydrologic cycle, are not located along the margin or edge of a water of the United States. These special aquatic sites do not share at least one boundary with a water of the United States (i.e. the high tide line or the ordinary high water mark).
CONTIGUOUS: The subject wetlands, under normal conditions in the hydrologic cycle, do not touch or directly connect to another water of the United States.
NEIGHBORING: The subject wetlands, under normal conditions in the hydrologic cycle, are not located within reasonable close proximity to another water of the United States, either on the horizon or vertical geometric plane. They are not located in either a contiguous or bordering landscape position. They do not have a shared surface hydrologic connection with any water of the United States during expected high flow. These wetlands are physically separated from any water of the United States by more than one hydrology barrier (e.g. man-made dikes, beach dunes, natural river berms, and/or similar obstruction). These wetlands would not allow the exchange of waters via a surface hydrology connection with any water of the United States during expected high flows.

2 December 2008 Rapanos Guidance:
Federal regulation and the Rapanos guidance have the same definition of adjacent. However, the Rapanos guidance provides some clarification and stated that if any one of the following three criteria is present, an adjacent determination could be made.

1) Unbroken Surface or Shallow Sub-Surface Connection: Based on off-site information and site visits, the Corps could not find any unbroken surface or shallow sub-surface connections between the subject wetlands and any jurisdictional waters. Based on the geomorphology, soils, and location of the subject wetlands, the only way that any potential shared hydrology between any of the subject wetlands and the nearest water of the United States would be during a brief and extreme (above normal) storm event. That connection would be at best speculative.
2) Physical Separation: The subject wetlands are not physically separated by man-made dikes or barrier, natural river berms, beach dunes and the like. They are located well inland from the nearest water of the United States.

3) Reasonably Close Proximity: The subject wetlands are not located in a reasonably close proximity that based upon supporting science, one could infer an ecological connection with any jurisdictional waters. This conclusion is based upon the refinement in the Rapanos guidance, which defines the "reasonably close" concept as a wetland that is located reasonably close to a jurisdictional water, in which an aquatic species (e.g. amphibians, or anadramous and catadramous fishes) requires both the jurisdictional water (excluding other wetlands) and the subject wetland for spawning and/or to fulfill their life cycles requirements. Each wetland was evaluated individually and was not evaluated with other wetlands in the area.

In conclusion, the subject wetlands, as determined by SWG, are not located adjacent (bordering, neighboring, or contigious) to any waters of the United States, as defined in 33 CFR 328.3(c). The subject wetlands are isolated, as defined in 33 CFR 330.2(e). The subject wetlands are located above the anticipated high flow of the closest water of the United States (above the100-year floodplain of any water of the United States). They do not have any confined hydrological surface connection, nor any know shallow subsurface connections to any water of the United States. They have also been determined not to be ecologically adjacent, as defined in the Rapanos guidance as being reasonably close such that an ecologic inteconnectivity is beyond speculation or insubstantial. There are not any known species in this georegion that require both the subject wetland and the nearest waterbody (a water of the United States other than an adjacent wetland) to fullfill spawning and/or life cycle requirements. Therefore, it is SWG draft determination that the subject wetlands are isolated, with no known nexus to interstate commerce. As such, they are not subject to federal jurisdiction under Section 404 of the Clean Water Act.

SWG-2013-00982 ISOLATED AQUATIC RESOURCE LIST

NAME	Appx SIZE (acres)	LAT	LON	APPX DISTANCE TO NEAREST WATERWAY	WATERWAY	APPX AERIAL DISTANCE TO TNW (Armand Bayou)
W1	0.3	29.611708	-95.134699	0.4 mile	Unnamed Tributary of Horsepen Bayou	2.2 miles
W2	0.8	29.610331	-95.133726	0.4 mile	Unnamed Tributary of Horsepen Bayou	2.2 miles
W3	0.8	29.609107	-95.132673	0.5 mile	Unnamed Tributary of Horsepen Bayou	2.1 miles
W4	2.8	29.607994	-95.131841	0.5 mile	Unnamed Tributary of Horsepen Bayou	2 miles
W5	0.3	29.606954	-95.132387	0.4 mile	Unnamed Tributary of Horsepen Bayou	2.1 miles
W6	0.5	29.606667	-95.131201	0.4 mile	Unnamed Tributary of Horsepen Bayou	2 miles
W7	0.7	29.605901	-95.130179	0.5 mile	Unnamed Tributary of Horsepen Bayou	2 miles
W8	0.5	29.614007	-95.132907	0.6 mile	Unnamed Tributary of Horsepen Bayou	2.1 miles
W9	0.4	29.612304	-95.133155	0.5 mile	Unnamed Tributary of Horsepen Bayou	2.1 miles
W10	0.2	29.611412	-95.131607	0.6 mile	Unnamed Tributary of Horsepen Bayou	2 miles
W11	0.2	29.61191	-95.130328	0.6 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles
W12	0.4	29.610789	-95.131135	0.6 mile	Unnamed Tributary of Horsepen Bayou	2 miles
W13	0.3	29.610094	-95.131644	0.6 mile	Unnamed Tributary of Horsepen Bayou	2 miles
W14	0.2	29.609326	-95.129487	0.6 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles
W15	0.3	29.607943	-95.128802	0.6 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles
W16	0.9	29.607661	-95.127332	0.7 mile	Unnamed Tributary of Horsepen Bayou	1.8 miles
W17	0.2	29.616419	-95.129723	0.9 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles
W18	7.7	29.615485	-95.130939	0.8 mile	Unnamed Tributary of Horsepen Bayou	2 miles
W19	1.2	29.615581	-95.129717	0.8 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles
W20	0.2	29.61432	-95.129734	0.8 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles
W21	1.4	29.614759	-95.128585	0.9 mile	Unnamed Tributary of Horsepen Bayou	1.8 miles
W22	0.1	29.614174	-95.129316	0.8 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles

SWG-2013-00982 ISOLATED AQUATIC RESOURCE LIST

NAME	Appx SIZE (acres)	LAT	LON	APPX DISTANCE TO NEAREST WATERWAY	WATERWAY	APPX AERIAL DISTANCE TO TNW (Armand Bayou)
W23	1.0	29.613463	-95.129563	0.7 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles
W24	0.2	29.612732	-95.128739	0.8 mile	Unnamed Tributary of Horsepen Bayou	1.9 miles
W25	0.4	29.611502	-95.128058	0.8 mile	Unnamed Tributary of Horsepen Bayou	1.8 miles
W26	0.8	29.608693	-95.12577	0.8 mile	Unnamed Tributary of Horsepen Bayou	1.7 miles
W27	0.1	29.615705	-95.128168	0.9 mile	Unnamed Tributary of Horsepen Bayou	1.8 miles
W28	0.3	29.615689	-95.126747	1 mile	Unnamed Tributary of Horsepen Bayou	1.7 miles
W29	0.5	29.614493	-95.126351	1 mile	Unnamed Tributary of Horsepen Bayou	1.7 miles
W30	4.8	29.613626	-95.125351	1 mile	Unnamed Tributary of Horsepen Bayou	1.6 miles
W31	0.5	29.612676	-95.126533	0.9 mile	Unnamed Tributary of Horsepen Bayou	1.7 miles
W32	0.6	29.61239	-95.124997	1 mile	Unnamed Tributary of Horsepen Bayou	1.6 miles
W33	0.8	29.611278	-95.124373	1 mile	Unnamed Tributary of Horsepen Bayou	1.6 miles
W34	0.5	29.616599	-95.124539	1.1 miles	Unnamed Tributary of Horsepen Bayou	1.6 miles
W35	1.2	29.615778	-95.125068	1.1 miles	Unnamed Tributary of Horsepen Bayou	1.6 miles
W36	0.6	29.615828	-95.123458	1.2 miles	Unnamed Tributary of Horsepen Bayou	1.5 miles
W37	4.4	29.614883	-95.122837	1.2 miles	Unnamed Tributary of Horsepen Bayou	1.5 miles
W38	4.9	29.613848	-95.121914	1.2 miles	Unnamed Tributary of Horsepen Bayou	1.4 miles
W39	1.0	29.61253	-95.122214	1.1 miles	Unnamed Tributary of Horsepen Bayou	1.5 miles
W40	1.2	29.611751	-95.123154	1 mile	Unnamed Tributary of Horsepen Bayou	1.6 miles
W41	0.6	29.611747	-95.121897	1.1 miles	Unnamed Tributary of Horsepen Bayou	1.4 miles
W42	0.6	29.612762	-95.119678	1.3 miles	Armand Bayou	1.3 miles
W43	0.7	29.616465	-95.120958	1.4 miles	Armand Bayou	1.4 miles
W44	0.3	29.616780	-95.119189	1.3 miles	Armand Bayou	1.3 miles

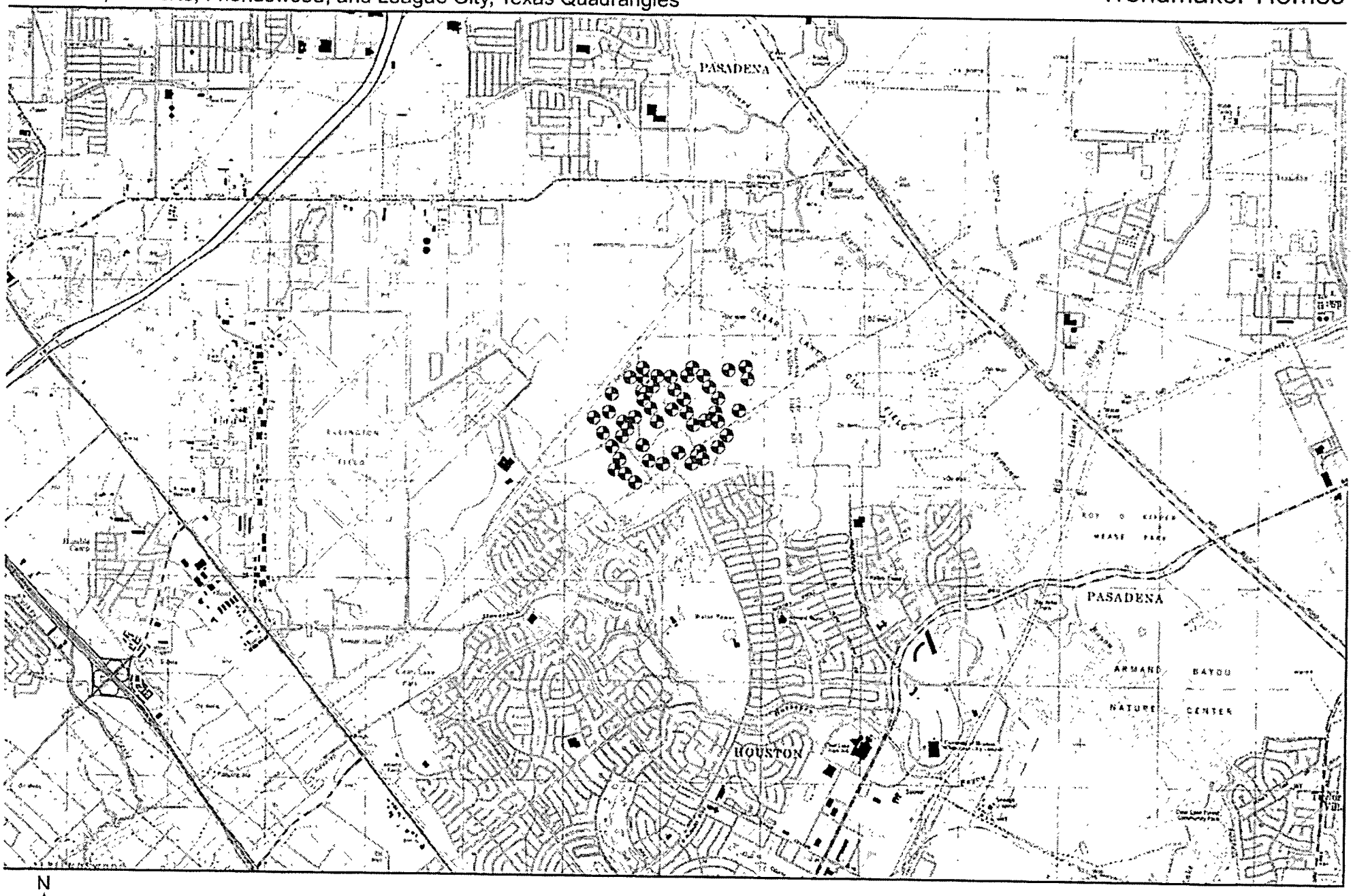
SWG-2013-00982 ISOLATED AQUATIC RESOURCE LIST

NAME	Appx SIZE (acres)	LAT	LON	APPX DISTANCE TO NEAREST WATERWAY	WATERWAY	APPX AERIAL DISTANCE TO TNW (Armand Bayou)
W45	1.0	29.615638	-95.118919	1.2 miles	Armand Bayou	1.2 miles
W46	0.6	29.610402	-95.12094	1.1 miles	Unnamed Tributary of Horsepen Bayou	1.4 miles
W47	0.1	29.609339	-95.121737	1 mile	Unnamed Tributary of Horsepen Bayou	1.4 miles
W48	0.8	29.608952	-95.123532	0.9 mile	Unnamed Tributary of Horsepen Bayou	1.6 miles
W49	0.1	29.608445	-95.123877	0.9 mile	Unnamed Tributary of Horsepen Bayou	1.6 miles
W50	0.02	29.608263	-95.123326	0.9 mile	Unnamed Tributary of Horsepen Bayou	1.6 miles
W51	0.2	29.607768	-95.124463	0.9 mile	Unnamed Tributary of Horsepen Bayou	1.6 miles

TOTAL: 49.2 acres

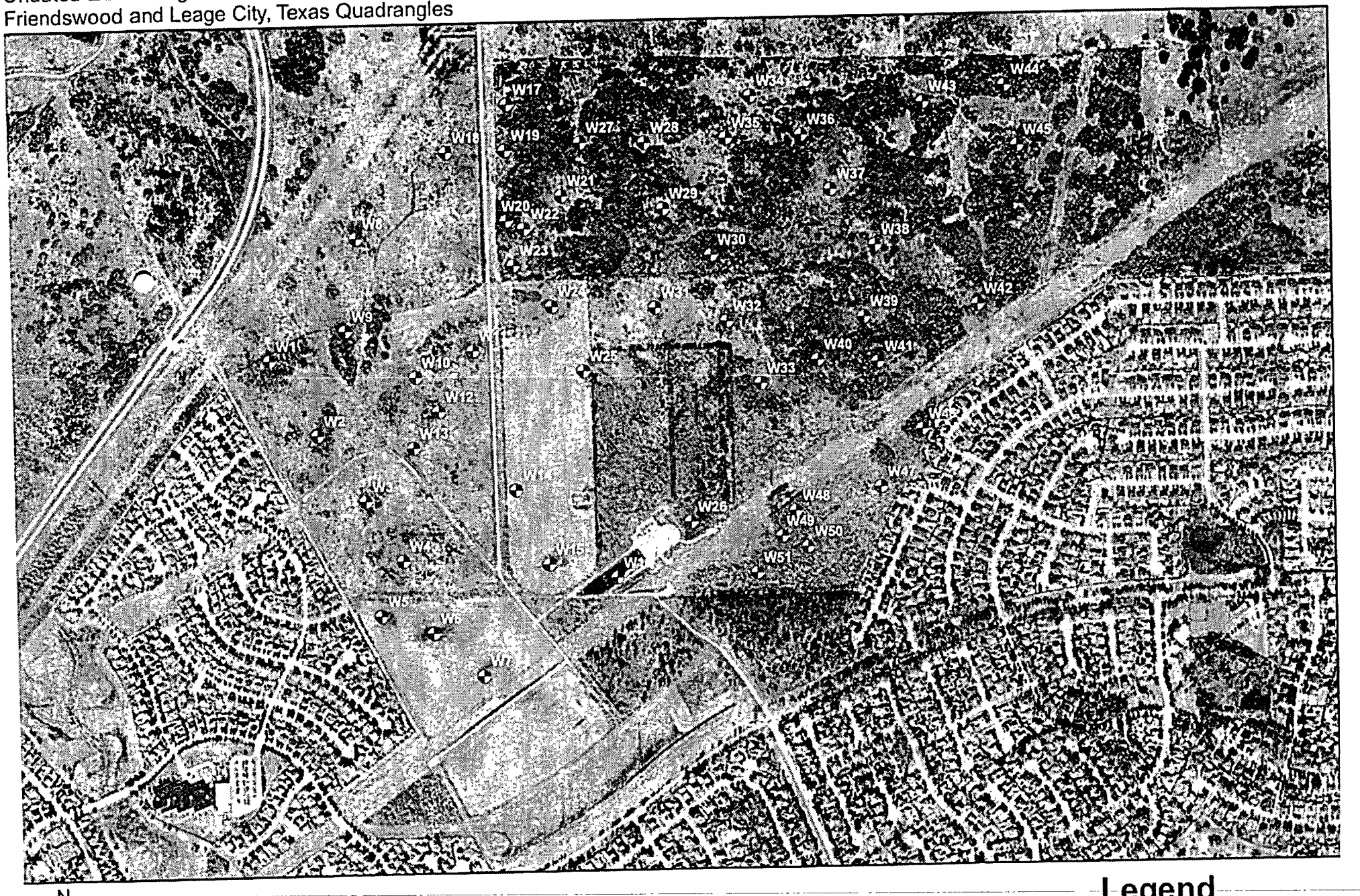
USGS Topographic Maps
Pasadena, La Porte, Friendswood, and League City, Texas Quadrangles

SWG-2013-00982
Trendmaker Homes



SWG-2013-00982
Trendmaker Homes

Undated ESRI Image
Friendswood and Leage City, Texas Quadrangles



N
W E
S

0 0.125 0.25 0.5 Miles

Legend

Teague, Kenneth

From: Parrish, Sharon
Sent: Thursday, October 09, 2014 1:56 PM
To: Teague, Kenneth; Kitto, Alison
Subject: FW: 51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)
Attachments: Isolated Wetlands SWG-2013-00982 Trendmaker Homes.pdf

Importance: High

Have we responded to these?

-----Original Message-----
From: Jaynes, Kenneth E (Kenny) SWG [mailto:Kenny.Jaynes@usace.army.mil]
Sent: Tuesday, October 07, 2014 12:13 PM
To: Isolated Waters; Parrish, Sharon
Cc: Dixon, Vicki G SWD; Davidson, John SWG; Shivers, Kristin D SWG
Subject: 51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)
Importance: High

NOTE: I will be out of the office from 8 Oct thru 20 Oct any questions need to be send to Mr. John Davidson.

Folks;

The purpose of this e-mail is to begin the coordination required for SWG draft non-jurisdictional determination for file SWG-2013-00982; for 51 isolated wetland polygons. This e-mail initiates the coordination process with the EPA as required by the Rapanos Guidance for finalizing jurisdictional determination for purposes of Section 404 of the Clean Water Act and "isolated" non-jurisdictional wetland determinations. NOTE: as of the date of this coordination much of this appx. 370 acre site has been impacted & filled and it is the Corps draft determination that these are non-jurisdictional wetlands and as such a non-permitted violation of Section 404 of the Clean water Act does not exist.

This approximate 370 acre project area is located east of Ellington Field in League City area of Harris County, Texas. The majority of the site has been landcleared and some detention basins have been constructed. This includes an appx 30 acre tract, located south of the pipeline easement that has not been landcleared. This small portion of the site has a mix of tallow dominated areas and open herbaceous seasonal prairie and has appx. 6 wetland polygons that total an appx 1.8 acres. This entire project area historically contained mostly upland prairie with a mix of seasonal depressional wetlands (some of which were dominated with tallow trees). It has been and continues to have portions being used for graze land. The source of hydrology for the wetlands on the site is precipitation. The wetland are seasonal and depressional. The soils are mapped as clay loams and clays; thus affecting lateral movement of shallow subsurface hydrology.

Since the majority of the site has been impacted by the mechanized land-clearing much of the extents of the wetlands were based upon off-site information in conjunction with four separate field visits conducted by the Corps. (NOTEWORTHY: a previous field visit was conducted by the Corps and EPA (Jim Herrington) to investigate a purported unauthorized activity which was found to not be an unauthorized activity.) The appx. wetland polygons and sizes varied from appx. 0.02 acre to greater than appx. 7 acres (noting greater than 80% are re less than an acre in size); with an estimated aggregate total of appx. 49 acres. The distance to the nearest water of the U.S. (a RPW of Horsepen Bayou) varied from appx. 0.4 mile to greater than 1.3 miles. The appx. distances to the nearest TNW (Armand Bayou) would be appx. 1.3 miles and the furthest would be appx. 2.2 miles. The entire site was examined and based on site information and off-site information there were not any confined surface hydrologic connections nor any shallow subsurface

hydrologic connections (based on sampling) detected. All of these appx. 51 wetlands are located outside the anticipated high flow (above the 100-year flood plain of any water of the U.S.). If there were ever to occur any "fill and spill" that might provide hydrology to any waters of the U.S., it would have to be through overland sheet flow, and it would be for extremely brief and episodically events that would occur in extreme above normal circumstances/conditions.

Historically, there have been concerns expressed regarding the fact that recent scientific reports revealed that isolated (as per federal regulations) depressional seasonal wetlands similar to these, provide sinks that fixate N and P and/or effect the water budget; to address this concern it is SWG position that there are numerous other factors that also play into these determinations. Therefore, based on the fact that these geographically isolated wetland that are not "inseparably bound-up" to the nearest TNW, it would be purely speculative to state that the destruction of these wetlands would have more than speculative or insubstantial effect upon the chemical, physical and/or biological integrity of the nearest TNW located greater than 1 mile away.

This determination is based on off-site analysis, numerous site visit, LIDAR, review of the consultant report, rules and regulations; it is SWG position that while there are numerous wetlands (appx 51) they are "isolated" and do not have any no-known nexus to interstate commerce; as such, they are waters of the U.S. subject to federal jurisdiction under Section 404 of the Clean Water Act.

These wetlands (as identified per the manual) are located outside any anticipated high flow (e.g. 100-yr floodplain) of any waters of the U.S., are surrounded by uplands, are not tidal, and are not located in an ecological landscape position that would be utilized for any known species in the geo-region that would require both the wetland and the water body to fulfill their life cycle requirements. These wetlands are located greater than a mile away from the nearest water body. There are not any surface hydrologic connections to any waters of the U.S., these wetlands are not located in a geomorphic position that is inseparably bound to any water of the U.S. nor is there any known biological species in this geo-region that requires both the wetland in review and the nearest TNW to full life cycle requirements.

Attached is the aerial photo & USGS map indicated the approximate location of each of these wetlands plus the required JD form and table for the appx. center and size for each wetland polygon.

In conclusion, the Corps has verified that the majority of the site is uplands and there are some pockets of depressional seasonal wetlands on the tract by using on-site and off-site information per the appropriate manual. The wetlands are located in an "isolated" (as defined by federal regulation: 33 CFR 330.2 Definitions:(e) Isolated waters means those non-tidal waters of the U.S. that are:(1) Not part of a surface tributary system to interstate or navigable waters of the US; and (2) Not adjacent to such tributary waterbodies). There is no known nexus to interstate commerce associated with any of them. As such, it is the Corps draft determination that these wetlands would not be subject to federal jurisdiction under Section 404 of the Clean Water Act. Noting as of the date of this e-mail much of this appx. 370 acre site has been impacted & filled and it is the Corps draft determination that these are non-jurisdictional wetlands and as such a non-permitted violation of Section 404 of the Clean water Act does not exist.

Kenny Jaynes
SWG POC